of other branches of the service.[6] This result, however, does not necessarily follow from the reason which supports the rule. The public duty of the carrier is a multiple one, a duty to adequately perform each class of service which it undertakes, and the courts may well require that the carrier shall not be compelled to increase the cost of performance of any individual class of service to such a point that it will be unprofitable. In the matter of confiscatory rates the Supreme Court has shown a disposition to hold confiscatory a rate on a single class of merchandise which will not allow to the carrier adequate compensation for that class of service.[7] This principle applies equally well when the state attempts to increase the cost of a service by compelling the furnishing of additional facilities. Thus an order to operate a particular passenger train at a loss is not confiscatory if the total receipts from passenger traffic — in which class of service the order properly belongs — supply that reasonable profit which other persons are permitted to make in their business ventures.

THE TAXABLE SITUS OF PROMISSORY NOTES. — Tangible personal property is taxable where actually located, and if so taxed the maxim *mobilia sequuntur personam* cannot be invoked to give an artificial situs at the owner's domicile.[1] The law as to the taxation of intangible personal property is in confusion. Since a debt, as such, can have no actual situs, the standard rule is to tax the asset to the creditor at his domicile.[2] But when the credit is evidenced by some tangible object, such as a note or a bond, an attempt to tax this object itself is frequently made. That credits in the form of public securities, state and municipal bonds, and bank notes, may be given a taxable situs at the place where they are found, is well recognized.[3] The tendency has been to extend this doctrine to all evidences of debts which have assumed concrete form. Mr. Justice Brewer has said: "notes and mortgages are of the same nature [as bonds, etc.] . . . and have such a concrete form that we see no reason why a state may not declare that if found within its limits they shall be subject to taxation."[4] This principle, declared to be law by numerous judges and text books,[5] receives a serious setback by a recent decision of the Supreme Court that the notes of an Ohio debtor, held in Indiana by the agent of the New York creditor, could not be given a taxable situs in Indiana. *Buck* v. *Beach*, 206 U. S. 392. The court returns to the old distinction between notes and specialties, treating the former as mere evidences of debt and not as taxable property in themselves. But why one rule should be applied to a municipal bond and another to a note is difficult to understand. Both are evidences of a debt and have a tangible form and a marketable value, and both are for many purposes treated as tangible property. Thus notes are regarded as being

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[6] Smyth *v.* Ames, *supra*, 540, 541, holding that a state may not justify low intrastate rates on the ground of large interstate profits.

[7] Minneapolis, etc., R. R. Co. *v.* Minnesota, 186 U. S. 257.

[1] Union, etc., Co. *v.* Kentucky, 199 U. S. 194. See 20 HARV. L. REV. 138.

[2] Kirtland *v.* Hotchkiss, 100 U. S. 491.

[3] See State Tax on Foreign Held Bonds, 15 Wall. (U. S.) 300, 324; Scottish, etc., Co. *v.* Bowland, 196 U. S. 611.

[4] New Orleans *v.* Stempel, 175 U. S. 309, 322.

[5] See Jefferson *v.* Smith, 88 N. Y. 576, 585; Judson, Taxation, § 394; Gray, Lim. of Taxing Power, § 86.

"goods and wares and merchandise" within the statute of frauds,[6] may be seized in a replevin suit,[7] and may be made subject to levy and sale on execution.[8]

The present holding, however, while it attacks the alleged basis of numerous decisions, will probably not affect the result in such cases in the future. Thus in cases under the inheritance or succession tax laws, the transfer of notes can still be taxed, because what is really taxed is not the notes as property but the transfer.[9] Again in states where a non-resident is carrying on a business, perhaps merely that of loaning money, he can still be taxed on his credits, since the real basis of this tax is not the physical presence in the state of the evidences of the credits, but the transaction of business under the protection of the state laws. Accordingly, it has been held that business credits of a non-resident may be taxed, although the notes evidencing them are out of the state,[10] or although the only evidences are memorandum checks,[11] or even open book accounts,[12] or a bank deposit.[13] Nevertheless, the present decision is to be regretted, since it checks the tendency toward a uniform rule that all substantial evidences of debt are taxable where found. The court claimed to be influenced by the desire to avoid double taxation. But the more efficacious method would be to follow the analogy of tangible personalty, allow all notes, bonds, etc., to be taxed where held, and then to decide that the maxim *mobilia sequuntur personam* should apply only in the absence of an actual situs.

THE FIDUCIARY CHARACTER OF DIRECTORS. — It is universally acknowledged that directors stand in a fiduciary relation to the corporation, but the extent and effects of this relationship are in dispute. The very common statement that they are trustees is palpably inaccurate, since they do not hold the legal title to the corporate property.[1] Like a trustee, a director must use reasonable care[2] and act in the utmost good faith,[3] but he is not liable for errors in judgment,[2] nor for wrong-doing by a co-director not imputable to him in fact.[4] In common with other fiduciaries, he will be prevented from profiting directly or indirectly by an abuse of his position,[5] and will be compelled to surrender to the corporation any rebates or bribes[6] he may receive.[7] However, while most fiduciaries must surrender the benefit of any bargain they may make in connection with the *res*,[8] a director may

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6 Baldwin *v.* Williams, 3 Met. (Mass.) 365.
7 See Pritchard *v.* Norwood, 155 Mass. 539, 542.
8 Brown *v.* Anderson, 4 Mart. (N. S.) (La.) 416.
9 Blackstone *v.* Miller, 188 U. S. 189.
10 Metropolitan, etc., Co. *v.* New Orleans, 205 U. S. 395. See 20 HARV. L. REV. 656.
11 State Board *v.* Comptoir Nat. d'Escompte, 191 U. S. 388.
12 People *v.* Barker, 157 N. Y. 159.
13 New Orleans *v.* Stempel, *supra.*

1 Olney *v.* Land Co., 16 R. I. 597, 598.
2 Vance *v.* Phœnix Co., 4 Lea (Tenn.) 385; 15 HARV. L. REV. 479.
3 New Memphis Gaslight Co. Cases, 105 Tenn. 268, 289.
4 Movius *v.* Lee, 30 Fed. 298.
5 Wardell *v.* R. R., 103 U. S. 651.
6 Rutland Light Co. *v.* Bates, 68 Vt. 579. See Metropolitan Bank *v.* Heiron, 5 Ex. D. 319.
7 A director may break with impunity a contract to use his authority or influence illegitimately. Noel *v.* Drake, 28 Kan. 265.
8 Van Horne *v.* Fonda, 5 Johns. Ch. (N. Y.) 388.